

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

MELANIE SAWYER LEAVENGOD, §
DOUGLAS T. BABB and all others §
similarly situated, §
Plaintiffs, §

vs. §

SHELL OIL COMPANY, SHELL §
EXPLORATION & PRODUCTION §
COMPANY, SHELL OFFSHORE §
INC., SHELL WESTERN E&P, INC., §
and SHELL GAS TRADING §
COMPANY, §
Defendants. §

CIVIL ACTION NO. 9:00cv140
(JURY TRIAL) HC

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U.S. DISTRICT COURT
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BY [Signature]

COMPLAINT

A. Parties

1. Plaintiff Melanie Sawyer Levensgood ("Levensgood") is an individual residing in Vacaville, California. Plaintiff Douglas T. Babb ("Babb") is an individual residing in Juneau, Wisconsin.

2. Defendant Shell Oil Company is a Delaware Corporation authorized to do business in the State of Texas, and can be served with a Summons by serving its registered agent at the following address: CT Corporation System, 811 Dallas Avenue, Houston, Texas 77002-5989.

3. Defendant Shell Exploration & Production Company is a Delaware Corporation authorized to do business in the State of Texas, and can be served with

Summons by serving its registered agent at the following address: Prentice Hall Corporation System, 800 Brazos, Austin, Texas 78701.

4. Defendant Shell Offshore Inc. is a Delaware Corporation authorized to do business in the State of Texas, and can be served with a Summons by serving its registered agent at the following address: CT Corporation System, 811 Dallas Avenue, Houston, Texas 77002-5989.

5. Defendant Shell Western E&P Inc. is a Delaware Corporation authorized to do business in the State of Texas, and can be served with a Summons by serving its registered agent at the following address: The Prentiss-Hall Corporation Systems, Inc., 800 Brazos, Austin, Texas 78701.

6. Defendant Shell Gas Trading Company is a Delaware Corporation authorized to do business in the State of Texas, and can be served with a Summons by serving its registered agent at the following address: CT Corporation System, 811 Dallas Avenue, Houston, Texas 77002-5989.

7. All of the Defendants listed above are affiliated entities. Shell Oil Company is believed to be the parent company of the other Defendants. All Defendants may be collectively referred to as "Shell" unless otherwise noted.

B. Jurisdiction and Venue

8. The Court has diversity jurisdiction pursuant to 28 U.S.C. §1332. Plaintiff Levengood is a resident of California. Plaintiff Babb is a resident of Wisconsin. None of the Defendants' principal places of business or place of incorporation is California or Wisconsin, therefore, there is complete diversity of citizenship.

9. Defendants reside in the Eastern District of Texas because they are subject to personal jurisdiction in the Eastern District of Texas. 28 U.S.C. §1391(c), therefore venue is appropriate pursuant to 28 U.S.C. §1391(a)(1). Venue is also appropriate in the Eastern District of Texas because a substantial part of the events giving rise to the claim occurred in the Eastern District of Texas including, but not limited to, the production of natural gas and the related underpayment of royalties. 28 U.S.C. §1391 (a)(2).

C. Nature of Action

10. Plaintiffs are royalty owners under one or more oil and gas leases owned and operated by Shell. Plaintiffs bring this action individually and on behalf of a class of similarly situated royalty owners (the "Royalty Owners") seeking damages for the underpayment of royalties on natural gas production in the United States. Plaintiff believes there are several thousand royalty owners who are members of the proposed class.

11. This action seeks to recover damages for breach of the express and implied terms of the Royalty Owners' oil and gas leases. Shell stands in the position of Lessee with respect to the Royalty Owners and has an obligation to manage and administer the leases as a reasonably prudent operator. Plaintiffs allege that Shell has breached this duty by failing to market the natural gas and natural gas liquids diligently and by failing to obtain the best current price reasonably obtainable for the Plaintiffs' and class members' natural gas and natural gas liquids and by imposing excessive and unauthorized charges and expenses for processing Plaintiffs' and class members' gas.

12. This breach is caused in part by Shell's abuse of the corporate form. The gas producing affiliates of Shell have "sold" natural gas and natural gas liquids to other

affiliates at favorable prices, using the "proceeds" from these inter-affiliate sales as the basis for the payment of royalty to the class members while the affiliated intermediaries resell the gas to third parties at higher prices. The corporate identity of the various corporate Defendants should be disregarded because they have used the corporate fiction as a means of perpetrating a fraud upon Plaintiffs and the class members and/or they have operated as alter egos of one another and/or they have operated as a single business enterprise and/or they have used the corporate fiction as a means of evading their legal obligations to Plaintiffs and class members.

13. Plaintiffs believe that Shell also used affiliates to market, gather, compress, and transport the gas produced from Plaintiffs' and class members' lands, paying to such affiliates unreasonable and excessive rates for such services, thereby decreasing the amount of royalty received by Plaintiffs and class members.

14. Plaintiffs also believe that they are not being paid the full amount due from the liquid products produced from the gas. These products are processed and/or extracted and/or marketed by affiliates of Shell and Shell wrongfully shifts a portion of the value of the products away from the gas produced from Plaintiffs' and class members' lands into these affiliate companies.

15. These actions constitute a breach of Shell's duty as lessee to manage and administer the lease as a reasonably prudent operator for the mutual benefit of the lessee and the lessor.

D. Class Action Allegations

16. Plaintiffs bring this action on behalf of a class consisting of (1) all individuals and entities that own or have owned royalties under leases within the United States producing natural gas and natural gas liquids, (2) owned and/or operated by Defendants and/or any subsidiary or affiliated company of Defendants, (3) where Defendants and/or any subsidiary and/or affiliated company of Shell markets and/or purchases the gas and/or processes, markets and/or purchases the liquids produced from the gas. Plaintiffs believe that there are several thousand leases that will be subject to this action and that there will be several thousand Royalty Owners in the class.

17. While the exact number of class members is unknown at this time and can only be determined by appropriate discovery, the members of the class are so numerous that joinder of all members is impractical.

18. Plaintiffs' claims are typical of the claims of the members of the class because the Plaintiffs are royalty owners, as are all of the class members. Plaintiffs and all of the class members have sustained and will continue to sustain damages of the same nature as a result of the excessive and unreasonable post-production charges made by Shell and/or any subsidiary or affiliate of Shell which has resulted in intentional and systematic underpayment of royalties by Shell. The excessive post-production charges made directly or indirectly by Shell, and the processing and/or marketing fees paid directly or indirectly to Shell, and/or the inter affiliate sales of gas, other products and other transactions, have the net effect of wrongfully decreasing the royalty income received by Plaintiffs and all class members.

19. Common questions of law and fact exist as to all the members of the class and predominate over any questions affecting only individual members of the class.

20. Plaintiffs will fairly and adequately protect and represent the interests of the class members and have retained competent counsel to handle this action. Plaintiffs are members of the class and their claims are typical of the claims of each class member. Plaintiffs do not have any interest antagonistic to or in conflict with those they represent as class representatives.

21. The prosecution of separate actions by individual members of the class would create a risk of (a) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for a party opposing the class; or (b) adjudications with respect to individual members of the class which would, as practical matter, be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

22. Shell has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

23. A class action is superior to other available methods for a fair and efficient adjudication of this controversy taking into consideration a) the interest of members of the class in individually controlling the prosecution or defense of separate claims, b) the extent and value of any litigation concerning the controversy already commenced by or against members of the class, c) the desirability or undesirability of concentrating this litigation in

this particular forum, and d) the difficulties likely to be encountered in the management of a class action. Because the damages sustained by individual class members may be relatively small, albeit significant, the expense and burden of individual litigation makes it impossible or economically unfeasible for the members of the class individually to seek redress for the wrongful conduct claimed in this petition. Absent a class action, Defendants will likely retain the benefit of their wrongdoing, and will continue in their current conduct to the detriment and injury of the Plaintiffs and class members. Plaintiffs claim that there are no difficulties likely to be encountered in the management of the class action.

E. Background Facts

24. Shell is engaged in the exploration for and development of natural gas, natural gas liquids and crude oil in the United States. Shell is also engaged in the business of purchasing and marketing natural gas and/or natural gas liquids in the United States.

25. Shell and its subsidiary and/or affiliated companies, including, but not limited to the Defendants specifically named herein, are engaged in what could be described as a "gas value chain" scheme of operation. The net effect and indeed the principal aim of the gas value chain is to wrongfully and artificially shift value away from the point where Plaintiffs' and all class members' royalty is calculated, and into Shell.

26. The gas value chain scheme is accomplished by causing and/or allowing Shell and/or its subsidiary and/or affiliated companies to produce the gas, gather the gas, process the gas, transport the gas, and finally market the natural gas and natural gas

liquids all amongst themselves as affiliated companies, and make unreasonable and excessive profits at each of these lengths of the "chain."

27. Finally, the gas and products are sold to independent third parties. The "gas value chain" means that substantial value is wrongfully and artificially shifted away from the point at which royalty is calculated and towards Shell, to the detriment of Plaintiffs and all class members. The purpose of the gas value chain is to provide inflated royalty-free revenue to Shell, Plaintiffs' and class members' lessee. The gas value chain constitutes a violation of the express and implied terms of Plaintiffs' and class members' oil and gas leases.

28. Shell markets a substantial portion of the natural gas and natural gas liquids produced. Plaintiffs believe that Shell markets much of the gas produced from Plaintiffs' and class members' lands.

29. A lessee such as Shell is not entitled to excessive and unreasonable revenues by virtue of such post-production activities. Plaintiffs believe that Shell has specifically established a system of doing business that causes such excessive and unreasonable profits to be funneled into Shell and its subsidiaries and/or affiliates to the detriment of Plaintiffs and all class members. This conduct constitutes a breach of Shell's express and implied lease obligations to Plaintiffs and all class members.

30. Plaintiffs believe that the prices upon which royalty is paid to Plaintiffs and all class members is based upon artificially low "index" prices or other prices selected by Shell and that Shell actually realized substantially increased revenue from legitimate, market value third party sales.

31. All conditions precedent have been performed or have occurred.

Count I - Breach of Contract

32. The allegations of the preceding paragraphs are incorporated herein as if fully set forth hereunder in their entirety.

33. The conduct of Shell described above constitutes a violation of the implied covenant to manage and administer Plaintiffs' and class members' oil and gas leases as a reasonably prudent operator and specifically a violation of the implied contractual duty to market the natural gas and/or natural gas liquids diligently and to obtain the highest price reasonably possible. This duty to Plaintiffs and class members arises under the leases between Shell and Plaintiffs and class members.

34. Rather than seek the highest price reasonably obtainable, Defendants rolled over in transactions amongst themselves, refusing to drive hard bargains, and permitting their subsidiary and/or affiliated companies to accumulate great profits to the detriment of Plaintiffs and all class members.

35. Plaintiffs and all class members have been significantly damaged by Shell's breach of the implied covenant to manage and administer the leases in an amount within the jurisdictional limits of the Court.

Court II Unjust Enrichment

36. The allegations of the preceding paragraphs are incorporated herein as if fully set forth hereunder in their entirety.

37. To the extent that Shell has engaged in self-dealing and its post-production activities have resulted in excessive and unreasonable profits, Shell has been unjustly enriched. These funds should be considered part of the funds received from the sale of gas and Plaintiffs and all class members should be entitled to receive a revenue interest share.

38. To the extent that shell has not paid these funds to Plaintiffs and all class members, these funds represent money had and received and/or unjust enrichment to Shell. These funds in equity and good conscience belong to Plaintiffs and all class members.

39. Plaintiffs and all class members have been significantly damaged by Shell's unjust enrichment in an amount within the jurisdictional limits of the Court.

Count III Action for Accounting

The allegations of the preceding paragraphs are incorporated herein as if fully set forth hereunder in their entirety.

40. Plaintiffs believe that Shell has been failing to pay the full amount due for royalty. Plaintiffs claim that Shell has been diverting funds that should be part of the royalty income of Plaintiffs and all class members in order to wrongfully profit Shell.

41. Plaintiffs and class members demand that Shell provide an accounting of all transactions relating to the sale or marketing of gas produced from Plaintiffs' and class members' lands.

F. Statute of Limitation

42. The causes of action set out above are not barred by any statutes of limitation because they were timely filed within the period set forth in the applicable statutes of limitation.

43. In the alternative, if it is shown for any reason that a limitation period is applicable to this suit, then Plaintiffs will show that Shell has, by fraud, induced Plaintiffs not to file suit within such limitation period.

44. In the alternative, Plaintiffs will show that this suit has been filed within the proper time after Plaintiffs discovered or, in the exercise of reasonable care, should have discovered, the injuries inflicted by Shell.

Attorneys' Fees

45. It has become necessary to employ attorneys to pursue this action. Plaintiffs are entitled to recover their necessary and reasonable attorneys' fees from Shell.

Request for Jury Trial

46. Plaintiffs request a trial by jury on all disputed factual issues.

Prayer for Relief

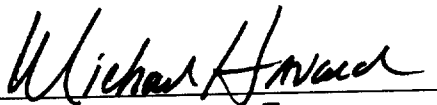
WHEREFORE, Plaintiffs request that Defendants be cited to appear and answer herein, and that the Court, upon hearing:

1. Enter an Order certifying this as a class action, said class to consist of (1) all individuals and entities that own or have owned royalties under leases producing natural gas and/or natural gas liquids; (2) owned and/or operated by Shell and/or any subsidiary or affiliated company of Shell; (3) where Shell and/or any subsidiary and/or affiliated company of Shell markets and/or purchases the natural gas and/or processes, markets, and/or purchases the liquids produced from the gas;

2. Order that Shell account for all funds received from gas purchasers for the sale of gas, from affiliate sales, for processing fees; for all post-production fees paid to Shell, and for any other fees paid by gas purchasers related to natural gas produced from Plaintiffs' and class members' lands;
3. Awarding Plaintiffs actual damages together with pre-judgment interest thereon at the legal rate until judgment;
4. Awarding Plaintiffs reasonable and necessary attorneys' fees incurred herein;
5. Awarding Plaintiffs post-judgment interest on all amounts awarded at the legal rate until paid; and
6. Awarding such other relief, equitable, special or general, to which Plaintiffs and the class members are justly entitled.

Dated: June 7, 2000

Respectfully submitted,



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